

AMENDED IN SENATE JUNE 26, 2012

AMENDED IN ASSEMBLY MAY 21, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 2149**

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**Introduced by Assembly Member Butler**

February 23, 2012

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An act to add Section 15657.8 to the Welfare and Institutions Code, relating to elder and dependent adults.

### LEGISLATIVE COUNSEL’S DIGEST

AB 2149, as amended, Butler. Elder and dependent adult abuse: settlement: gag order.

The Elder Abuse and Dependent Adult Civil Protection Act proscribes crimes against elder and dependent adults involving physical and financial abuse. The act provides for the award of attorney’s fees and costs, and damages to a plaintiff, when it is proven that a defendant is liable for physical abuse, neglect, or financial abuse, and the defendant has also been guilty of recklessness, oppression, fraud, or malice in the commission of the abuse.

The Civil Discovery Act provides that it is the policy of the state that confidential settlement agreements are disfavored in any civil action the factual foundation for which establishes a cause of action for violation of the Elder Abuse and Dependent Adult Civil Protection Act. The Civil Discovery Act prohibits the court from recognizing or enforcing provisions of such a confidential settlement agreement in the absence of specified conditions.

This bill would provide that an agreement, *entered on or after January 1, 2013*, to settle a civil action for physical abuse, neglect, or financial abuse of an elder or dependent adult shall not include any provision that, among other things, prohibits contact or cooperation with the county adult protective services agency, the local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, or the Licensing and Certification Division of the State Department of Public Health, the State Department of Developmental Services, the State Department of Mental Health, a licensing or regulatory agency that has jurisdiction over the license or certification of the defendant, any other governmental entity, a protection and advocacy agency, as defined, or the defendant's current employer if the defendant's job responsibilities include contact with elders, dependent adults, or children, as specified. The bill would provide that any such provision is void as against public policy.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 15657.8 is added to the Welfare and  
2     Institutions Code, to read:  
3     15657.8. (a) An agreement to settle a civil action for physical  
4     abuse, as defined in Section 15610.63, neglect, as defined in  
5     Section 15610.57, or financial abuse, as defined in Section  
6     15610.30, of an elder or dependent adult shall not include any of  
7     the following provisions, whether the agreement is made before  
8     or after filing the action:  
9     (1) A provision that prohibits any party to the dispute from  
10    contacting or cooperating with the county adult protective services  
11    agency, the local law enforcement agency, the long-term care  
12    ombudsman, the California Department of Aging, the Department  
13    of Justice, the Licensing and Certification Division of the State  
14    Department of Public Health, the State Department of  
15    Developmental Services, the State Department of Mental Health,  
16    a licensing or regulatory agency that has jurisdiction over the  
17    license or certification of the defendant, any other governmental  
18    entity, a protection and advocacy agency, as defined in Section  
19    4900, or the defendant's current employer if the defendant's job  
20    responsibilities include contact with elders, dependent adults, or

1 children, provided that the party contacting or cooperating with  
2 one of these entities had a good faith belief that the information  
3 he or she provided is relevant to the concerns, duties, or obligations  
4 of that entity.

5 (2) A provision that prohibits any party to the dispute from filing  
6 a complaint with, or reporting any violation of law to, the county  
7 adult protective services agency, the local law enforcement agency,  
8 the long-term care ombudsman, the California Department of  
9 Aging, the Department of Justice, the Licensing and Certification  
10 Division of the State Department of Public Health, the State  
11 Department of Developmental Services, the State Department of  
12 Mental Health, a licensing or regulatory agency that has jurisdiction  
13 over the license or certification of the defendant, any other  
14 governmental entity, a protection and advocacy agency, as defined  
15 in Section 4900, or the defendant's current employer if the  
16 defendant's job responsibilities include contact with elders,  
17 dependent adults, or children.

18 (3) A provision that requires any party to the dispute to withdraw  
19 a complaint he or she has filed with, or a violation he or she has  
20 reported to, the county adult protective services agency, the local  
21 law enforcement agency, the long-term care ombudsman, the  
22 California Department of Aging, the Department of Justice, the  
23 Licensing and Certification Division of the State Department of  
24 Public Health, the State Department of Developmental Services,  
25 the State Department of Mental Health, a licensing or regulatory  
26 agency that has jurisdiction over the license or certification of the  
27 defendant, any other governmental entity, a protection and  
28 advocacy agency, as defined in Section 4900, or the defendant's  
29 current employer if the defendant's job responsibilities include  
30 contact with elders, dependent adults, or children.

31 (b) A provision described in subdivision (a) is void as against  
32 public policy.

33 (c) *This section shall apply only to an agreement entered on or*  
34 *after January 1, 2013.*